

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RYAN HANDLEY,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner,
Social Security Administration,

Defendant.

No. C-05-04683 SC

ORDER DENYING
PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT
AND GRANTING
DEFENDANT'S
CROSS-MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiff Ryan Handley ("Claimant") filed this action against Defendant, Jo Anne B. Barnhart, Social Security Administration ("SSA") Commissioner ("Defendant" or "SSA"), under 42 U.S.C. §§ 405(g) and 1383(c)(3), seeking judicial review of the SSA's decision to partially reduce Claimant's retroactive Supplemental Security Income ("SSI") benefits.

Claimant now moves for summary judgment, arguing the SSA made errors of law at two stages in its determination to reduce Claimant's retroactive benefits: by the Appeals Council in the formulation of its remand instructions to an Administrative Law Judge ("ALJ"); and by ALJ James Kaplan ("ALJ Kaplan") in the manner

1 in which he reached his determination.¹ Defendant has responded
2 with a cross-motion for summary judgment, seeking a final
3 dismissal of this case. Because the Court finds that 1) the Court
4 lacks the subject matter jurisdiction to evaluate the the Appeals
5 Council's remand instructions, and 2) the ALJ Kaplan correctly
6 conducted the hearing before him and any error committed by ALJ
7 Kaplan in the manner in which he formulated his decision was
8 harmless, the Court hereby DENIES, in whole, Claimant's motion for
9 summary judgment, GRANTS Defendant's Cross-Motion For Summary
10 Judgment, and AFFIRMS the decision of the SSA.

11 **II. BACKGROUND**

12 The history of this case is long and multifaceted, involving
13 several decisions, appeals, grants, denials, and remands. Thus,
14 while the instant complaint involves only the most recent set of
15 actions by the SSA, the Court believes that it is proper to lay
16 out the entire background of the dispute between the parties. The
17 following facts are based on the Administrative Record ("AR").

18 First Application for Benefits

19 On April 1, 1995, Claimant filed his first application for
20 SSI benefits, under sections 1602 and 1614(a)(3)(A) of the Social
21 Security Act, alleging an inability to work due to a psychological
22 disorder ("First Application").² AR at 44. On September 1, 1995,

23
24 ¹ As discussed below, Claimant also vaguely alleges, but does
not argue, errors of fact by the SSA.

25 ² In the numerous proceedings which followed this application,
26 Ryan Handley and his father, Max Handley, on Ryan's behalf, are
alternatively listed in relevant documents as petitioners before
27 the SSA and the courts. For the sake of clarity, the Court will
not maintain this distinction, but rather will identify Ryan

1 the SSA denied the application and, on January 25, 1996, denied it
2 again on reconsideration. Id. On September 18, 1997, after a
3 hearing, an ALJ denied Claimant's appeal of the decision. Id. On
4 the same day, Claimant timely requested the Appeals Council review
5 of the ALJ's decision. Id.

6 Second Application for Benefits

7 On November 24, 1997, while his request for an Appeals
8 Council review of the First Application's denial was pending,
9 Claimant filed a second application for SSI benefits ("Second
10 Application"). Id. at 45. This time, the SSA found that Claimant
11 was disabled and so eligible for benefits, but only as of the date
12 on which the Second Application was filed, November 24, 1997.

13 Renewed First Application

14 On May 7, 1999, the Appeals Council granted Claimant's
15 pending request for review of the denial of his First Application,
16 and remanded the case to ALJ John Flanagan ("ALJ Flanagan"). AR
17 at 44. In light of the SSA's decision granting Claimant's Second
18 Application, ALJ Flanagan was called on to determine only whether
19 the Claimant was eligible for retroactive SSI benefits for the
20 period from April 1, 1995 (the date when Claimant filed his First
21 Application) to November 24, 1997 (the date from which the SSA
22 found, on the basis of Claimant's Second Application, that
23 Claimant was eligible for benefits). Id. at 45.

24
25 _____
26 Handley as the "Claimant," regardless whether a particular action
27 was initiated by him directly or on his behalf, and will refer to
28 Max Handley, when acting other than as Ryan's representative in
initiating an action before the SSA or the courts, as "Max Handley"
or "Max."

1 On July 30, 1993, ALJ Flanagan issued a decision based on
2 evidence presented at a pre-trial hearing on July 23, 1993 ("ALJ
3 Flanagan's Decision"). Id. at 44. The decision found that
4 Claimant was disabled between April 1, 1995 and November 24, 1997
5 ("Interim Period"), and so was eligible for SSI benefits during
6 this period.³ AR at 47.

7 Reduction of Retroactive Benefits by the SSA

8 In an application dated September 2, 1999, Claimant
9 requested, pursuant to ALJ Flanagan's Decision, payment of
10 retroactive benefits for the Interim Period. Id. at 57-69. The
11 application appears to have been filled out by an SSA employee but
12 signed by Max Handley on August 31, 1999. Id.

13 In its relevant parts, the application reflects an
14 acknowledgment by Max Handley that he provided food and shelter to
15 the Claimant worth \$1,000.00 a month ("Interim In-Kind Support").
16 Id. at 60. Though the application lists only "4/95," as the date
17 of support, id., handwritten notes elsewhere on the form state
18 that Max Handley provided Claimant this support every month of the
19 Interim Period in the form of rent sent directly to Claimant's
20 landlords and provision of food directly to Claimant. Id. at 68.
21 Those notes also reflect Max Handley's agreement with the value of
22 \$1,000.00 per month assigned to the Interim In-Kind Support and
23 his acknowledgment that the SSA will reduce Claimant's benefits as
24 a result of the support. Id.

25
26 ³ALJ Flanagan found that Claimant suffered from personality
27 disorder, organic brain syndrome, and substance addiction disorder.
28 AR at 45

1 Notes of the SSA from a subsequent conversation with Max
2 Handley similarly reflect that Max paid rent directly to
3 Claimant's landlords, and the SSA's decision to award Claimant
4 \$14,967.50 in retroactive benefits. Id. at 84. On September 21,
5 1999, the SSA sent Claimant a letter stating the SSA's decision to
6 award him this amount in retroactive benefits and informing him
7 that, based on this amount, Claimant's attorney was only allowed
8 to charge him \$3,741.87 in fees. Id.

9 A letter sent by Claimant's attorney to ALJ Catherine Lazuran
10 ("ALJ Lazuran") in the context of a subsequent proceeding
11 discussed below, describes the above outlined interactions between
12 Max Handley and SSA as follows:

13 SSA called [Max Handley] in and [he] told the worker
14 that he expected to be repaid for the money loaned
15 during the appeal period. The worker[,] I guess,
disbelieved him and denied the loan status, deducting
\$183 per month for "in kind support."

16 Id. at 135. Neither the application for retroactive benefits nor
17 any other contemporary documentation reflect that Max Handley ever
18 made such a statement to an SSA representative or that such a
19 statement was disbelieved by an SSA representative.

20 First Appeal of the Decision to Reduce Retroactive Benefits

21 On November 2, 1999, Claimant timely requested
22 reconsideration of the SSA's decision to reduce the amount of
23 retroactive benefits due to him. Id. at 99. The stated reason
24 for the request was that the Interim In-Kind Support was a loan
25 rather than a gift, and so the benefit reduction decision was
26 erroneous. Id. Attached to the request was a declaration signed
27 by Max Handley, dated "October ____ 1999" ("Declaration of Max
28

1 Handley"). Id. at 100. The declaration states inter alia that
2 the Interim In-Kind Support "WAS A LOAN," and that if anything
3 else was understood by the SSA as a result of Max Handley's
4 conversation with them, it "was a misunderstanding." Id.

5 On March 27, 2000, the SSA issued a notice of reconsideration
6 affirming the benefit reduction decision. The notice stated the
7 following reason for its decision: "We could not consider the
8 payments made by you to Ryan as a loan because he did not have a
9 valid means of repaying you." Id. at 125. On April 4, 2000,
10 Claimant made a timely request for a hearing by an ALJ. Id. at
11 129.

12 On December 5, 2000, a hearing was held before ALJ Lazuran;
13 neither the Claimant nor Max Handley attended. Id. at 9. In
14 their absence, Claimant's attorney described the situation as he
15 understood it, and offered to ALJ Lazuran two documents to support
16 Claimant's contention that the Interim In-Kind Support was a loan
17 rather than a gift: the Declaration of Max Handley and a
18 promissory note concluded by Claimant for the benefit of Max
19 Handley on November 30, 2000, six days before the hearing
20 ("Promissory Note"). Id. at 17.

21 The Promissory Note purports to "reaffirm[] former oral
22 promise to pay made in April of 1995 as and for funds received by
23 Maker from that date to the present and promises to pay to Max
24 Handley . . . the principal sum of TWENTY THOUSAND FIVE HUNDRED
25 DOLLARS with NO interest thereon." Id. at 142. It further states
26 that this promise is given in exchange "[f]or value received."
27 Id.

1 On June 25, 2001, ALJ Lazuran issued a decision finding inter
2 alia that: 1) Max Handley provided Claimant with in-kind support
3 and maintenance in the approximate amount of \$1,000.00 per month
4 between April 1995 and November 1997; and 2) Max Handley's
5 provision of the Interim In-Kind Support did not constitute a loan
6 for SSI purposes, because "no bona fide loan agreement existed
7 regarding the repayment of this money" ("ALJ Lazuran's Decision").
8 Id. at 11.

9 ALJ Lazuran purported to base the latter finding on
10 California contract law, which "finds invalid 'an agreement that
11 by its terms is not to be performed within a year from the making
12 thereof.'" Id. (quoting Cal. Civ. Code 1624(a)(1)).⁴ According to
13 ALJ Lazuran, Claimant's monthly income from SSI payments prevented
14 Claimant from possibly being able to perform his purported
15 obligation to repay Mr. Handley within a year, and thus any
16 alleged loan agreement regarding the Interim In-Kind Support was
17 invalid. Id.

18 On August 17, 2001, Claimant made a timely request for review
19 to the Appeals Council of the Third ALJ Decision. The request
20 alleged that ALJ Lazuran "impermissibly ignored the California law
21 when determining that 'no bona fide loan agreement existed,'" and
22 that ALJ Lazuran is "biased against this claimant." Id. at 6.

23 On January 30, 2003, the Appeals Council denied Claimant's
24 request for review and adopted ALJ Lazuran's decision as the
25

26 ⁴ The Court notes that Cal. Civ. Code 1624(a)(1), more
27 precisely, requires such an agreement to be memorialized in a
28 writing "subscribed by the party to be charged or by his agent."

1 decision of the SSA ("Third Appeals Council Decision"). The
2 Appeals Council found that ALJ Lazuran had displayed no bias
3 against Claimant, and that she was correct in determining that no
4 bona fide loan agreement existed. In reaching the latter
5 decision, the Appeals Council backed away slightly from ALJ
6 Lazuran's reasoning. Instead, the Appeals Council pointed to the
7 testimony of Claimant's representative before ALJ Lazuran, which,
8 in the Appeals Councils' determination, evidenced that Claimant's
9 obligation to repay Max Handley was conditional, and thus "the
10 loan was not entered into in good faith which is a requirement for
11 establishing a bona fide loan agreement." Id. at 4.

12 Court's December 2004 Stipulated Remand Order

13 On January 28, 2003, Claimant timely filed a complaint with
14 this Court for review of the Third Appeals Council Decision.
15 After a lengthy briefing period, during which Claimant
16 unsuccessfully tried repeatedly to transform his claim into a
17 class action, the parties agreed, on December 21, 2004, to a
18 stipulated order remanding the case to the SSA. Id. at 166.

19 The Stipulation and Order of Remand ("Court's Stipulated
20 Remand") stated in its relevant part:

21 Upon remand, the Appeals Council will remand this case
22 to an Administrative Law Judge (ALJ) and instruct him or
23 her to further consider whether the claimant was
24 receiving in-kind support and maintenance from his
25 father during the period from April, 1995, to November,
26 1997; whether there was a valid loan agreement under
27 California law between the claimant and his father as
28 defined in Social Security Ruling 92-8p and Ceguerra v.
Sec'y of HHS, 933 F.2d 735 (9th Cir. 1991); and, if so,
the effective date of the valid loan agreement.

Id. at 167-68.

Appeals Council 2005 Remand Order

On January 31, 2005, as instructed by the Court's Stipulated Remand, the Appeals Council remanded the case to an ALJ. Id. at 171. The Order of Appeals Council Remanding Case to Administrative Law Judge ("Appeals Council 2005 Remand Order") contains instructions to the ALJ that reiterated, almost verbatim, the above quoted language of the Court's Stipulated Remand. Id. It further states:

In making the above determination, the Administrative Law Judge will consider whether or not it was the actual intent of the parties that repayment would be made or whether there was an understanding that repayment was not expected and would not be pursued. The Administrative Law Judge will obtain the testimony of the claimant and his father/representative payee and will question them closely regarding the terms of the original oral loan, subsequent "reaffirmations"[sic], and, finally, the written loan document.

Id.

May 2005 ALJ Hearing

On May 11, 2005, a hearing was held before ALJ Kaplan. This time, both Claimant and Max Handley attended, and, in accordance with the Appeals Council 2005 Remand Order, ALJ Kaplan elicited the testimony of both. Id. at 207.

The first substantive questioning was by Claimant's attorney of Max Handley. The questioning focused on when Claimant began receiving SSI benefits, Claimant's condition at that time and before, any assistance given by Max Handley to Claimant prior to Claimant receiving benefits, and, finally, the circumstances surrounding the creation of the Promissory Note. Regarding the assistance he gave to Claimant, Max Handley stated:

1 I supported Ryan. I not only paid his rent, but
2 provided money for his well-being and food. I didn't
3 have enough for health insurance, but I realized that he
4 needed help, so I helped him.

5 Id. at 211. When Claimant's attorney asked Max whether this
6 support was given "with an understanding that [Claimant] would
7 repay [Max] if [Claimant] could," Max replied, "Yes, we talked
8 about that." Id.

9 Regarding the Promissory Note, Max expressed a fairly vague
10 recollection of its conclusion, and a conditional expectation that
11 Claimant would perform according to its terms. Id. at 211-12.
12 ALJ Kaplan interjected to inquire as to the basis on which Max
13 expected Claimant to perform. Id. at 211. Max responded:

14 Well if Ryan comes, if he's at some point in time able
15 to hold down a full-time job and earn a good living, I
16 expect him to repay this amount. If he comes to an
17 inheritance, that would be nice. I hope that happens to
18 him.

19 Id. In follow-up questioning, Claimant's attorney clarified that,
20 other than what Max planned to leave Claimant (which Max admitted
21 "won't do me any good"), Max had no basis for an expectation that
22 Claimant would inherit any money. Id. at 213. Finally, Max
23 admitted that Claimant had not yet made any payments to Max in
24 satisfaction of Claimant's purported debt to him. Id. at 212.

25 ALJ Kaplan began his formal questioning of Max Handley with
26 an examination of the circumstances surrounding the creation of
27 the Promissory Note. He first asked, "what were the circumstances
28 that precipitated the creation of the document of November 2000,
the promissory note?" Id. at 214. Max responded with a
description of a discussion he had with Claimant that repaying Max

1 "at some point in time . . . would be the right thing to do" and
2 Max's expectation that Claimant would do so, "if [Claimant] [was]
3 capable of repaying this money." Id. Max finished with the
4 statement, "I try to make [Claimant] responsible." Id.

5 His question regarding the circumstances surrounding the
6 creation of the Promissory Note unanswered, ALJ Kaplan asked it
7 again. Id. 214-15. Max again responded vaguely:

8 Well that's a good question. It was probably due to the
9 fact that I didn't want to continue, you know,
10 supporting [Claimant] with no regard to him having
11 responsibility to pay me back. It slid for a few years,
12 but at one point in time, and I guess this would have
13 been around the year that you mentioned[,] 2000, that I
14 expected that he should be responsible to pay back [,]
15 in part, some of the money that I loaned him for his
16 support.

17 Id.

18 In response, ALJ Kaplan tried again to get at the specific
19 circumstances surrounding the creation of the Promissory Note by
20 leading Max through yes and no questions:

21 ALJ Kaplan: In with [sic] respect to this promissory
22 note of November 2000, now it's a legal document. Who
23 prepared it?

24 Max Handley: Ian Sammi [Claimant's attorney].

25 ALJ Kaplan: And at that time you had pending a request
26 for review, for a request for a hearing before [an]
27 Administrative Law Judge with respect to the same issue
28 that I am hearing today, is that correct?

Max Handley: That's correct.

ALJ Kaplan: Well[,] is it fair to say that the document
was prepared in order to facilitate making -- promoting
the position you were taking in that pending legal
matter?

Max Handley: Yes.

Id. at 216-17. When ALJ Kaplan asked Max to explain this last

1 answer, he, again explained vaguely that because Max had been
2 supporting Claimant before he received SSI benefits, Max
3 "believ[ed] that [Claimant] should repay this money to me". Id.
4 at 217.

5 Having still not received an answer to his question, ALJ
6 Kaplan stated: "I'm still not clear as to what was intended to be
7 accomplished through the promissory note." Id. 218. To this,
8 Claimant's attorney interjected with a lengthy response that
9 ended: "So as to answer, the note was created to facilitate or
10 help the appeal that was beginning, was correct [sic]." Id. at
11 219. Max Handley's final and most specific statement regarding
12 the circumstances surrounding the Promissory Note discusses the
13 amount which the Promissory Note recites as promised to Max:

14 I probably could have come up with a larger figure, but
15 I figured that was sufficient. I mean[,] I realize
16 that, you know, [Claimant] is going to be hard pressed
to pay that back so, but I still wanted to, just felt it
was right to make him accountable.

17 Id. at 220.

18 Following this lengthy exchange, ALJ Kaplan moved his
19 examination of Max Handley as to the circumstances of the support
20 Max provided Claimant. After establishing that Max regularly sent
21 checks to the landlords of the locations where Claimant stayed
22 during the Interim Period, ALJ Kaplan asked Max, "But what was
23 your understanding in terms of what it was you were doing with
24 these checks?" Id. at 222. To this, Max responded:

25 Well[,] he's my child, so I was basically keeping him
26 from being on the street, being homeless. So I provided
27 for his welfare, which any parent would probably do
28 under the circumstances.

1 Id. at 222.

2 When, ALJ Kaplan responded that this statement was "a little
3 bit at odds" with Max's prior statements about how the support he
4 provided to Claimant was a loan, Max replied "Yeah." Id. at 223.
5 ALJ Kaplan, subsequently gave Max Handley more opportunities to
6 explain his "understanding at [the] time" he was providing
7 Claimant the Interim In-Kind Support. Id. at 223. Max Handley's
8 responses consistently displayed a very general or vague
9 expectation or hope that Claimant would repay Max, "when he was
10 able to," a motivating desire by Max to provide the support so as
11 to keep Claimant "out of harm's way," and a belief that requiring
12 Claimant to pay him back would help Claimant "be responsible."
13 Id. at 224.

14 In reaction to this last sentiment, ALJ Kaplan queried Max
15 Handley about whether supporting Claimant caused Max any financial
16 hardship. Max responded that it had, and, in fact, that he had to
17 "take another job to support him, which was okay." Id. at 225.
18 ALJ Kaplan queried him whether that had any relationship to Max's
19 desire that Claimant pay him back:

20 And so there may have been, it was not a irrelevant
21 financially [sic], but your primary reasons seem to be
22 more in the area of you thought it was appropriate, that
he repay you possibly, correct?

23 Id. at 225. To this, Max replied, "Yes." Id.

24 Following this exchange, and with a brief intermission during
25 which ALJ Kaplan and Claimant's attorney discussed applicable law,
26 ALJ Kaplan continued to get at Max's intention at the time he
27 provided the In-Kind Interim Support to Claimant and, to an
28

1 extent, Claimant's reactions to the payments as Max perceived
2 them. Max described Claimant as "grateful" and with the intent to
3 reimburse Max. Id. at 233. Regarding Max's intention at the time
4 of his provision of the In-Kind Interim Support, Max responded
5 affirmatively to ALJ Kaplan's final summary that Max's provision
6 of support to Claimant was primarily to keep Claimant off the
7 street and secondarily to make Claimant responsible for his own
8 benefit. Further, Max confirmed that he had no real expectation
9 of Claimant being able to repay him from resources inherited nor a
10 "realistic expectation," at the time or now, "of repayment, based
11 on [Claimant's] work history to date." Id. at 235.

12 Claimant was then examined. His attorney first briefly had
13 Claimant confirm that the signature on the Promissory Note was
14 Claimant's, that Claimant had received support from Max Handley
15 during the Interim Period, and that Claimant had had discussions
16 with Max about repaying him for this support when he could. Id.
17 at 237.

18 ALJ Kaplan then attempted to examine Claimant, but quickly
19 Claimant became uncooperative, confused, or both. Asked whether
20 he recalled when and where discussions regarding repayment
21 occurred, Claimant responded several times with requests to his
22 attorney to answer for him. Id. at 237-38. When the request was
23 denied and the question renewed, Claimant responded, "You're
24 asking me a question that I'm taking the Fifth Amendment on." Id.
25 at 238. Claimant subsequently respond affirmatively to questions
26 seeking confirmation that Max provided support to him for six
27 years and that Claimant appreciated it. Id. But when asked
28

1 whether he ever stated anything regarding paying Max back for this
2 support, he replied again, "I take the Fifth Amendment." Id.

3 Claimant's attorney and ALJ Kaplan explained to Claimant that
4 taking the Fifth was not appropriate in this context. Id. at 239.
5 Seeming to understand, Claimant changed his response and confirmed
6 that he had at some point during the time he was receiving the
7 Interim In-Kind Support stated to Max his intention to pay Max
8 back, but could not recall when or where. Id. at 239-40. The
9 only basis he was able to give for how he intended to make such
10 repayment was that he would be able to do so once his attorney
11 "successfully represented [his] SSI Disability Claim." Id. at
12 241.

13 ALJ Kaplan's Decision Affirming Reduction of Retroactive Benefits

14 On August 6, 2005, ALJ Kaplan issued a decision which
15 reaffirmed the SSA's decision to reduce Claimant's retroactive
16 benefits, based on his determination that Claimant had "not
17 sustained his burden of proving that payments made by his father
18 on behalf of claimant constitute a loan" (ALJ Kaplan's Decision").
19 Id. at 164. In reaching this conclusion, ALJ Kaplan engaged in a
20 kind of two and a half part analysis based on his understanding of
21 SSR 92-8p and Hickman v. Bowen, 803 F.2d 1377 (5th Cir. 1986) and
22 Ceguerra v. Secretary of Health and Human Services, 933 F.2d 735
23 (9th Cir. 1991) decisions on which SSR 92-8p is founded.

24 ALJ Kaplan's Decision states first "[a]s to issues concerning
25 the application of California law, I am ruling in favor of
26 claimant's contentions. Nothing in California law precludes
27 finding a loan to exist under the circumstances of this case."

1 Id. at 158. However, he continued, "[d]etermining whether a loan
2 agreement exists under SSR-8p and supporting case law is more
3 difficult to resolve." Id.

4 The decision then identifies "generally the understanding or
5 intent of the parties to a transaction" as the "dispositive
6 issue," and lays out a two-part criteria, based on SSR 92-8p, for
7 determining it: "(1) A loan 'means' an advance that a borrower
8 'must repay' and (2) when money is given and accepted based on any
9 understanding other than that it is to be repaid 'no loan
10 exists.'" Id. at 158.

11 ALJ Kaplan disposed of the second part of this criteria as
12 follows: "I find based on the totality of the evidence in this
13 case--and without a rigid application of the SSR 92-8p assignment
14 of the burden of proof to a claimant--that the record does not
15 establish an understanding that the advance of money from Mr.
16 Handley to claimant is not a loan." Id. at 158. Having so
17 decided, ALJ Kaplan determined that he was left only with "the
18 question of whether the payments are an advance claimant must
19 repay." Id.

20 To answer this question, ALJ Kaplan began with a
21 consideration of the Promissory Note, which begins with: "I do
22 not find [the Promissory Note] to constitute evidence having
23 substantial weight as to the issue whether [the Interim In-Kind
24 Support] constituted a loan." Id. In support of this conclusion,
25 the decision details Max Handley's ambiguous response to ALJ
26 Kaplan's questions regarding why the Promissory Note was concluded
27 (detailed supra pp. 10-14), and Max's testimony that the

1 Promissory Note was drafted by Claimant's attorney to improve
2 Claimant's legal position in his then upcoming hearing before ALJ
3 Lazuran (detailed supra p. 11). Id. at 158-59.

4 ALJ Kaplan did not, however, formally find that the
5 promissory note was a sham; rather, the decision states "that the
6 note was prepared in order to satisfy what counsel believed to be
7 the legal requirement for a written contract to be found for SSI
8 purposes." Id. at 159. On this basis, and because no such
9 requirement exists, ALJ Kaplan subsequently ruled that the
10 Promissory Note's only relevance "is its reference to reaffirming
11 an oral promise purportedly made in 1995," but that its late
12 creation made its weight in this regard slight. Id.

13 Having thus disposed of the Promissory Note, the remainder of
14 the decision focuses on the testimony given by Max Handley and, to
15 a lesser extent, Claimant regarding the circumstances under which
16 Max provided the Interim In-Kind Support and the alleged oral
17 agreement that Claimant would repay Max for it. This testimony,
18 ALJ Kaplan found, failed to prove that the Interim In-Kind Support
19 constituted an advance which Claimant "must repay." Id. Rather,
20 he found that the testimony of Max Handley in particular,
21 demonstrated a conditional "hope" on Max's part that Claimant
22 would at some point be able to pay the money back. Id. at 162
23 This hope was based, further, not on an expectation that Claimant
24 would fulfill a binding promise made to Max, but instead "a
25 father's well meaning desire to see his son's mental state improve
26 to the point where he would be able to work, with the incidental
27 potential for repayment." Id.

1 ALJ Kaplan "accord[ed] no probative weight to claimant's
2 testimony." Id. at 163. In particular, the decision states:

3 In the context of his refusal to answer questions or
4 provide details, his vague reference to discussions and
5 "an understanding" about repayment fail to provide
6 support for finding the existence of a loan based on
7 payments that "must" be made.

8 Id. The decision further cites, in support of ALJ Kaplan's
9 negative credibility assessment of Claimant, Claimant's decision
10 to "answer[] only questions of his choosing, his refusal to
11 testify fully and his obvious ability to understand and take
12 advantage of subtle facts . . . and testify when it was suitable
13 and advantageous to him." Id.

14 Finally, ALJ Kaplan noted that while Claimant has now begun
15 to receive SSI benefits, Claimant, unlike the beneficiary in
16 Ceguerra, has not yet made any payments to Max Handley pursuant to
17 the terms of the Promissory Note. Id.

18 The particular findings of the decision state inter alia
19 regarding the nature of the Interim In-Kind Support:

20 5. California law does not preclude finding a loan to
21 exist based on the facts of this case.

22 6. The record does not establish that the payments do
23 not constitute a loan within the meaning of SSR 92-8p.

24 7. The record does not establish that the payments
25 represent a loan that must be repaid within the meaning
26 of SSR 92-8 [sic].

27 8. Claimant has failed to sustain the burden of proving
28 that a loan exists.

9. No valid loan agreement existed regarding the in
kind advance pursuant to SSR 92-8p and Secretary of HHS
v. Ceguerra, 933 F.2d (9th Cir. 1991) [sic].

Id. at 163-64.

1 On September 23, 2005, Claimant timely appealed ALJ Kaplan's
2 decision to the Appeals Council, claiming both an error of law by
3 ALJ Kaplan and bias. Id. at 149-51. The Appeals Council denied
4 the appeal on October 21, 2005, and adopted ALJ Kaplan's decision
5 as that of the SSA. Id. at 146-48. On November 10, 2005,
6 Claimant filed the instant complaint, timely appealing the latter
7 decision, but no longer making any allegation of bias.

8 **III. LEGAL STANDARD**

9 The Court will reverse the SSA's decision to reduce SSI
10 benefits only "if it is not supported by substantial evidence or
11 based on legal error." Burch v. Barnhart, 400 F.3d 676, 679 (9th
12 Cir. 2005) (internal quotation omitted). "Substantial evidence is
13 more than a mere scintilla but less than a preponderance; it is
14 such relevant evidence as a reasonable mind might accept as
15 adequate to support a conclusion." Sandgate v. Charter, 108 F.3d
16 978, 980 (9th Cir. 1995). Credibility determinations of witness
17 testimony are left to the ALJ, Lewis v. Apfel, 236 F.3d 503, 509
18 (9th Cir. 2001), but like all findings of fact must be supported
19 by substantial evidence in the record. Ceguerra v. Sec'y of
20 Health and Human Serv., 933 F.2d 735, 738 (9th Cir. 1991).
21 Finally, "[a] decision of the ALJ will not be reversed for errors
22 that are harmless," Burch, 400 F.3d at 679, and a reviewing court
23 has "the power to enter, upon pleadings and transcript of the
24 record, a judgment affirming, modifying, or reversing the decision
25 of the Commissioner of Social Security, with or without remanding
26 the cause for a rehearing." 42 U.S.C. 405(g).

27 As with any motion for summary judgment, the movant "always
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1 bears the initial responsibility of informing the District Court
2 of the basis for its motion, and identifying those portions of the
3 pleadings, depositions, answers to interrogatories, and admissions
4 on file, together with the affidavits, if any, which it believes
5 demonstrate the absence of a genuine issue of material fact."
6 Celotex v. Catrett, 377 U.S. 317, 323 (1986).

7 **IV. DISCUSSION**

8 Though far from models of clarity, Claimant's Motion for
9 Summary Judgment ("MSJ") and Claimant's Opposition to Defendant's
10 Cross Motion for Summary Judgment ("Claimant's Opposition")
11 together contain two main arguments for overturning the SSA's
12 decision: 1) the Appeals Council's instructions to the ALJ
13 (ultimately ALJ Kaplan) contained in the Appeals Council 2005
14 Remand Order constituted a reverseable error of law; and 2) ALJ
15 Kaplan's taking of the testimony of Max Handley and Claimant to
16 determine whether a valid loan agreement existed under California
17 law concerning the Interim In-Kind Support did as well. See MSJ;
18 Claimant's Opposition. The Government's Cross-Motion for Summary
19 Judgment ("Cross-Motion"), in response, refutes both contentions
20 and requests that ALJ Kaplan's decision be affirmed. See Cross-
21 Motion.

22 For the reasons discussed below, the Court finds that:
23 1) the Appeals Council 2005 Remand Order does not constitute a
24 final decision of the SSA, and so is not reviewable by this Court;
25 2) ALJ Kaplan was correct in taking the testimony of Claimant and
26 Max Handley to determine whether a valid loan agreement under
27 California law existed concerning the Interim In-Kind Support, and
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1 any error committed by ALJ Kaplan in the manner in which he
2 formulated his decision was harmless. Claimant's MSJ is therefore
3 DENIED, the Government's Cross-Motion GRANTED, and the decision of
4 the SSA is AFFIRMED.

5 A. Appeals Council 2005 Remand Order

6 Claimant's first claim of error is that the instructions
7 contained in the Appeals Council 2005 Remand Order constituted a
8 reverseable error of law. See MSJ; Claimant's Opposition. The
9 Court dismisses this claim on the ground that the Appeals Council
10 2005 Remand Order constitutes a non-final decision of the SSA, to
11 which the Court has no subject matter jurisdiction to hear
12 challenges. Matlock v. Sullivan, 908 F.2d 492, 493 (9th Cir.
13 1990).⁵

14 Claimant characterizes the legal error allegedly committed by
15 Appeals Council alternatively as failing to follow the "rule of
16 mandate" or as violating the "law of the case." In particular,
17 Claimant points to instructions in the Appeals Council 2005 Remand
18 Order which instruct the ALJ upon remand to "obtain the testimony
19 of the claimant and his father/representative payee and will
20 question them closely regarding the terms of the original oral
21 loan, subsequent 'reaffirmations', and, finally, the written loan
22 document." AR at 171. According to Claimant this "misrepresented
23 California law," Claimant's Opposition at 4, and thus constituted
24 a failure to follow the Court's Stipulated Remand Order, a failure

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26 ⁵ Though Defendant's papers fail to raise a jurisdictional
27 challenge to this claim of error by Claimant, subject matter
jurisdiction is unwaivable and the Court is obligated to address
such issues sua sponte, if necessary.

1 which Claimant describes as violation of the "law of the case"
2 and/or "rule of mandate." MSJ at 4. For the sake of clarity, the
3 Court notes that Claimant's claim of error in this regard is more
4 properly characterized as simply an error of law. Sullivan v.
5 Hudson, 490 U.S. 877, 886 (1989) ("Deviation from the court's
6 remand order in the subsequent administrative proceedings is
7 itself legal error, subject to reversal on further judicial
8 review.")

9 But regardless how Claimant might choose to characterize his
10 claim of an error by the Appeals Council in its formulation of its
11 2005 Remand Order, it fails, because that order is a non-final
12 decision by the SSA which this Court cannot review. "The Social
13 Security Act ("Act") limits judicial review to 'final decision[s]
14 of the Secretary made after a hearing.'" Matlock 908 F.2d at 493
15 (quoting 42 U.S.C. § 405(g) and additionally citing 42 U.S.C. §
16 405(h)). As the court in Matlock noted, the Act does not
17 establish what constitutes a "final decision," but rather leaves
18 it to SSA to "flesh out by regulation." Id. (internal citation
19 omitted). Section 404.984 of the Social Security Regulations
20 states, "[i]n accordance with § 404.983, when a case is remanded
21 by a Federal court for further consideration, the decision of the
22 administrative law judge will become the final decision of the
23 Commissioner after remand on your case unless the Appeals Council
24 assumes jurisdiction of the case." 20 C.F.R. § 404.948.⁶ The

26 ⁶ Section 404.983 gives the Appeals Council the discretion,
27 upon remand of a case from a Federal court, to make a decision
28 itself or to remand the case to an ALJ. 20 C.F.R. § 404.983.

1 Appeals Council did not assume jurisdiction when it remanded the
 2 case to ALJ Kaplan, and so ALJ Kaplan's decision, after it was
 3 adopted by the Appeals Council on October 21, 2005, AR. at 146-48,
 4 became the final decision of the SSA. It is therefore ALJ
 5 Kaplan's decision, and not the Appeals Council 2005 Remand Order,
 6 which is reviewable by this Court. See Pallotta v. Barnhart, 144
 7 Fed. Appx. 938, 940 (3rd Cir. 2005); Bowman v. Secretary of Health
 8 & Human Services, 986 F.2d 1426 (10th Cir. 1993)(table decision).⁷

9 B. ALJ Kaplan's Determination

10 Claimant raises, in his MSJ and Opposition, and to a greater
 11 and lesser degree argues, various reasons why ALJ Kaplan's
 12 decision should be over-turned. Rather than spend the time
 13 outlining each, the court will deal (and dispose of) each in turn.

14 1) Alleged Errors of Fact

15 Twice in its papers, Claimant makes bald assertions that ALJ
 16 Kaplan made factual errors in his determination: "Commissioner's
 17 actions, findings and conclusions were not supported by
 18 substantial evidence," MSJ at 2; "Plaintiff alleges that the ALJ
 19 has unfairly and inaccurately summarized the facts in his decision
 20 August 26, 2005." Claimant's Opposition at 2. The Court can

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 22 ⁷ Claimant's own pleadings, in fact, admit that the ultimate
 23 location of the alleged legal error, if any, rests with ALJ Kaplan:
 24 "Because the ALJ relied on the Appeals Councils [sic] rendering of
 25 California law, the Appeals Council's error became the ALJ's
 26 failure to follow the 'rule of mandate' because the charge to the
 27 Appeals Council and ultimately to the ALJ was to make the
 28 determination following California law." Claimant's Opposition at
 4 (emphasis added). It thus is not only proper under the law, but
 also makes logical sense, for the Court to judge whether the SSA
 committed the alleged legal error where that error, if any,
 actually occurred, viz., in the context of the decision by ALJ
 Kaplan.

1 perceive of no support for these allegations in the record.
2 Furthermore, Claimant has itself offered no argument to support
3 them. The Court, thus, denies that part of Claimant's MSJ based
4 on these allegations. See Celotex 377 U.S. at 323.

5 2) Alleged Legal Errors

6 Claimant, more or less clearly, also makes two claims of
7 reverseable legal error by ALJ Kaplan. Both fail.

8 a) ALJ Kaplan's Provisional Determination

9 Claimant first argues ALJ Kaplan's finding that "[n]othing in
10 California law precludes finding a loan to exist under the
11 circumstances of this case," MSJ at 5 (quoting AR at 158),
12 constitutes a finding that "the memorialization was a valid loan
13 under California law and thus binding on the parties which was
14 sufficient under Defendant's own Rule SSR 92-8p." Id.

15 This argument first fails for the plain reason that the
16 finding was preliminary and provisional: ALJ Kaplan's ultimate
17 finding was that "[n]o valid loan agreement existed." AR at 164.
18 Though it is unfortunate that ALJ Kaplan was not clearer in this
19 regard, ALJ Kaplan appears to have made this provisional finding
20 in response to clauses in SSR 92-8p which make clear the
21 requirement that a loan be "enforceable under State law" is to be
22 interpreted as broadly as the applicable state law allows. SSR
23 92-8p(1). In this regard, Section 1 of the ruling states that "as
24 long as it is enforceable under State law," a loan may be "cash or
25 an in-kind advance," it can be a "commercial or non-commercial
26 loan (between relatives, friends or others)," and the agreement on
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1 which it is based "may be oral or written." SSR 92-8p(1).⁸ ALJ
2 Kaplan's provisional finding constituted only a determination
3 that, as an initial matter, California law recognized the
4 possibility of an enforceable loan existing, if the circumstances
5 were as alleged.

6 While, for reasons explained below, this does not affect the
7 Court's ultimate decision to affirm ALJ Kaplan's decision, the
8 Court does agree with Claimant's implicit argument--which the
9 Government seems also to implicitly accept--that the key
10 determination for ALJ Kaplan was whether the Interim In-Kind
11 Support constituted an enforceable loan under California law.
12 The two times the Ninth Circuit Court of Appeals has been called
13 on to determine what constitutes a loan for the purposes of
14 deciding whether an SSI beneficiary's benefits should be reduced
15 under 20 C.F.R. § 416.1103--first under former ruling SSR 78-26 and
16 second under current SSR 92-8p--it has focused the inquiry on
17 whether the alleged loan was "enforceable under state law."
18 Sharma v. Barnhart, 32 Fed. Appx. 236, 238 (9th Cir. 2002);
19 Ceguerra 933 at 739-40. This is supported by the text of SSR 92-
20 8p, which defines a loan twice in its Section 1 by reference to
21 whether the alleged loan is enforceable under state law, SSR 92-
22 8p(1), and refers back to Section 1 in subsequent sections, when

24 ⁸ The Court notes in this regard that the SSA issued SSR 92-8p
25 to supercede its former ruling on the subject, SSR 78-26, in
26 response to the decisions of the Fifth Circuit Court of Appeals in
27 Hickman v. Bowen 803 F.2d 1377 (5th Cir. 1986) and Ninth Circuit
28 Court of Appeals in Ceguerra 933 F.2d 735, which both found inter
alia that SSR 78-26 improperly excluded advances of in-kind support
in its definition of qualifying loans. SSR 92-8p, Background.

1 the result turns on whether something is a loan. See SSR 92-
2 8p(2), (4). Thus, ALJ Kaplan's somewhat convoluted and confusing
3 parsing of Section 1 of SSR 92-8p and reference to Section 3 of
4 SSR 92-8p was unnecessary and incorrect. See supra p. 16. The
5 only inquiry which ALJ Kaplan was required to conduct under SSR
6 92-8p and the Court's Stipulated Remand Order was whether there
7 existed a valid loan agreement covering the Interim In-Kind
8 Support, enforceable under California law. However, as explained
9 below, ALJ Kaplan committed no legal error in the manner in which
10 he conducted his hearing, and his ultimate determination that no
11 such valid loan agreement existed was also correct, thus any error
12 ALJ Kaplan committed by formulating his decision in the manner he
13 did was harmless.

14 b) ALJ Kaplan's Consideration of Parol Evidence

15 Claimant's other claim that ALJ Kaplan committed a
16 reverseable legal error mirror's Claimant's misplaced argument
17 regarding the Appeals Council 2005 Remand Order discussed above:
18 ALJ Kaplan improperly considered parol evidence, specifically the
19 testimony by Claimant and Max Handley, in reaching his
20 determination that there was no valid loan agreement covering the
21 Interim In-Kind Support. This argument also fails.

22 As an initial matter, Claimant's argument demonstrates a
23 fundamental misunderstanding of the task which ALJ Kaplan was
24 given and thus the law which applies to it. Claimant, citing the
25 existence of a written instrument in the form of the Promissory
26 note, states that ALJ Kaplan was required, under California law,
27 to first "determine whether the language of the written contract
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1 was 'reasonably susceptible' to an interpretation of more than one
2 meaning," before he made recourse to extrinsic evidence.

3 Claimant's Opposition at 4. However, the Court's Stipulated
4 Remand Order, the Appeals Council 2005 Remand Order, and ALJ
5 Kaplan's decision all make clear that the issue before ALJ Kaplan
6 was not the interpretation of the alleged loan agreement but its
7 validity. AR at 166, 171, 156. California law specifically
8 allows the introduction of extrinsic evidence to determine the
9 validity of an agreement, written or otherwise. "Where the
10 validity of the agreement is the fact in dispute, this section
11 does not exclude evidence relevant to that issue." Cal. Code.
12 Civ. Prod. § 1856(f); see also Cal. Code. Civ. Prod. § 1856(g)
13 (allowing consideration of extrinsic evidence to, inter alia,
14 establish allegations of the fraudulent nature of an agreement).

15 Thus, some of the cases cited by Claimant do support the
16 proposition that California law places some restrictions on
17 recourse to extrinsic evidence when interpreting a written
18 agreement. See, e.g., MSJ at 7 (quoting City of Hope National
19 Medical Center v. Genetch, Inc., 123 Cal. Rptr. 3d 234, 246-247
20 (Cal. App. 2005) ("The test of admissibility if extrinsic evidence
21 to explain the meaning of a written instrument . . . If the
22 language is in fact fairly susceptible to two interpretations.")
23 (modifications and emphasis added). But Claimant is incorrect in
24 its assertion that the proposition applies here where the issue is
25 not the interpretation of a loan agreement covering the Interim
26 In-Kind Support but rather its existence and validity.

27 The fact that the written agreement in this case is the
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1 Promissory Note which alleges to "reaffirm" a prior oral promise
2 by the Claimant somewhat complicates, but does not fundamentally
3 change the situation. AR at 142. The Promissory Note is held by
4 Max Handley, rather than a holder in due course, and thus its
5 enforcement is subject to the same defenses as apply to the
6 enforcement of a simple contract. Cal. Com. Code § 3305(a)(2).
7 And in evaluating these defenses, ALJ Kaplan was subject to the
8 same general rules regarding the admissibility of extrinsic
9 evidence discussed above. FPI Development, Inc. v. Nakashima, 231
10 Cal. App. 3d 367, 376 (3d Dist. 1991).

11 Thus, ALJ Kaplan was free to test the validity of the
12 Promissory Note by taking extrinsic evidence to determine whether
13 the note was fraudulent or a "sham." FPI Development, Inc. 231
14 Cal. App. 3d at 401 ("Where the defense is that the writing is a
15 sham, i.e., no jural act at all, the parol evidence rule, strictly
16 speaking, has no application. That the writing is a promissory
17 note affords no categorical basis for exception.") (internal
18 citations omitted); Cal. Code. Civ. Prod. § 1856(g). And ALJ
19 Kaplan was free to test the Promissory Note's validity by taking
20 extrinsic evidence to determine whether it was given for
21 consideration. Saks v. Charity Mission Baptist Church, 90 Cal.
22 App. 4th 1116, 1134 (2d Dist. 2001) ("[T]he absence of
23 consideration is always a defense to a suit on a promissory note
24 and since an instrument lacking in consideration is invalid this
25 fact may be shown by extrinsic evidence.") (internal citations
26 omitted); Colorado National Bank v. Bohm, 286 F.2d 494, 496 (9th
27 Cir. 1961); Cal. Code. Civ. Prod. § 1856(f). A pre-existing debt,

1 or "antecedent claim," can constitute sufficient consideration to
2 support the validity of a promissory note, Cal. Com. Code
3 § 3303(a)(3), (b), and therefore can be tested, as any other claim
4 of consideration, by recourse to extrinsic evidence. See,
5 generally, McKay v. Security-First Nat. Bank of Los Angeles, 35
6 Cal. App. 2d 349, 354 (2d Dist. 1939).

7 Thus, it was completely proper for ALJ Kaplan to query
8 Claimant and Max Handley regarding the circumstances under which
9 the Promissory Note was concluded, including the fact that it was
10 drafted five years after the oral promise allegedly took place and
11 on the eve of a proceeding before the SSA and for the admitted
12 purpose of helping Claimant's position in that proceeding. See
13 supra ¶. 10-12, 14-15. Such an inquiry goes to whether the
14 Promissory Note was a sham, and thus its validity. FPI
15 Development, Inc. 231 Cal. App. 3d at 401. It was also proper for
16 ALJ Kaplan to query Claimant and Max regarding the alleged oral
17 promise that the Promissory Note purports to affirm. See supra ¶.
18 13-15. As discussed above, a pre-existing debt can constitute
19 sufficient consideration for a promissory note, thus ALJ Kaplan
20 was wholly within the law to inquire whether Claimant really owed
21 Max Handley a pre-existing debt flowing from an oral agreement
22 regarding the Interim In-Kind Support made at the time it was
23 given. Further, as ALJ Kaplan correctly noted, there is no
24 requirement under California law, and thus SSR 92-8p, that a loan
25 agreement be written, thus the validity of the alleged oral loan
26 agreement was potentially independently dispositive. For either
27 purpose, it was unquestionably proper for ALJ Kaplan to examine
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1 both Claimant and Max Handley so as to determine whether an oral
2 loan agreement manifesting their mutual intent was ever formed.
3 Banner Entertainment, Inc. v. Superior Court, 62 Cal. App. 4th.
4 348, 358-59 (2d Dist. 1998).⁹

5 As the Court noted above, while it finds no error in the
6 manner in which ALJ Kaplan conducted the hearing just described,
7 it does not approve of the way he subsequently formulated his
8 decision. ALJ Kaplan, properly, should have drafted his decision
9 along the lines which the above discussion suggests. First, he
10 should have made a finding one way or another whether the
11 Promissory Note was a sham. Second, he should have made a finding
12 whether there was a valid oral agreement under California law
13 which covered the Interim In-Kind Support: either as the basis
14 for Claimant's alleged oral promise which the Promissory Note
15 purports to reaffirm and which is therefore alleged to form the
16 consideration for the Promissory Note; or, if he found the
17 Promissory Note was a sham, as an independent basis for finding
18 the Interim In-Kind Support was a loan.

19 It would, however, be needless formalism to remand the case
20 back to ALJ Kaplan or another ALJ for this reason. The Court is
21 comfortable on the basis of the Record, including ALJ Kaplan's
22

23 ⁹ As noted above, Claimant's arguments regarding the Appeals
24 Council's and/or ALJ Kaplan's failure to follow the "rule of
25 mandate" or the "law of the case" are more properly characterized
26 as an argument that the SSA failed to follow the terms of the
27 Court's Stipulated Remand Order, which, if proved, would constitute
28 an error of law. Because the Court finds no error under California
law in the manner in which ALJ Kaplan conducted the hearing on
remand, it finds that ALJ Kaplan did not violate the terms of the
Court's Stipulated Remand Order.

1 very competent questioning of Max Handley and the Claimant, to
2 determine for itself, as it is free to, that there was no valid
3 oral agreement under California law covering the Interim In-Kind
4 Support, either to support the Promissory Note or to provide an
5 independent basis for finding a loan. However, the Court sees no
6 need to do so.

7 Though his wording could have been more precise, ALJ Kaplan
8 made more than adequate findings to support the conclusion that
9 there was no valid oral loan agreement, which was necessary, in
10 any event, to reach his formal finding that "[n]o valid loan
11 agreement existed regarding the in kind advance pursuant to SSR
12 92-8p and Secretary of HHS v. Ceguerra, 933 F.2d (9th Circuit
13 1991) [sic]." AR at 164. These include the specific finding
14 "that the advance was not made with the understanding that there
15 must be repayment." Id. at 162. This finding is directly at odds
16 with a determination that Max Handley and Claimant shared a
17 "[m]utual intent" at the time the Interim In-Kind Support was
18 provided that the support constituted an enforceable loan. Banner
19 Entertainment, Inc., 62 Cal. App. 4th at 358. Such "[m]utual
20 intent is determinative of contract formation," and thus its
21 absence defeats Claimant's assertion that a valid oral loan
22 agreement was concluded between Claimant and Max Handley regarding
23 the Interim In-Kind Support, "because there is no contract unless
24 the parties thereto assent." Id.

25 This, and ALJ Kaplan's other related findings, are based on
26 substantial evidence garnered from Max Handley's testimony, much
27 of which ALJ Kaplan quotes extensively in his decision. ALJ
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1 Kaplan's determination that Claimant's contrary assertions were
2 not credible are fully explained in his decision and are more than
3 substantially supported by the evidence in the Record. AR at 163.

4 **V. CONCLUSION**

5 For the aforementioned reasons, Claimant's Motion for Summary
6 Judgment is hereby DENIED in full, Defendant's Cross-Motion for
7 Summary Judgment is hereby GRANTED, and the decision of the SSA is
8 AFFIRMED.

9 IT IS SO ORDERED.

10 Dated: July 28, 2006



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12 UNITED STATES DISTRICT JUDGE
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